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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
09/774,248	01/30/2001	James R. Gross	1313/1G952US2	9852
7590 11/02/2004				
DARBY & DARBY P.C. 805 Third Avenue New York, NY 10022			EXAMINER KIDWELL, MICHELE M	
			ART UNIT 3761	PAPER NUMBER

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/774,248

Applicant(s)

GROSS ET AL.

Examiner

Michele Kidwell

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 14-29, 31-34 and 37-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 30 and 35-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

This application contains claims 14 – 28, 31 – 34 and 37 – 42 drawn to an invention nonelected with traverse in Paper No. 8. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Information Disclosure Statement***

The information disclosure statements filed 5/21/01 and 7/12/01 fail to comply with 37 CFR 1.98(a)(1), which requires a list of all patents, publications, or other information submitted for consideration by the Office. The information referred to therein has not been considered.

To have these documents considered, the applicant should resubmit the form listing these documents along with proof of receipt from the Office for the initial submission.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1 – 6, 10 – 13, 29 – 30 and 35 – 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Hammons et al. (US 5,647,863).

With reference to claim 1, Hammons et al. (hereinafter "Hammons") discloses an absorbent core (abstract) comprising an acquisition layer (38), a storage layer (44) having absorbent capacity (col. 9, lines 10 – 18), disposed beneath and in fluid communication with the acquisition layer (figure 3) and a wicking layer (46,48) disposed beneath and in fluid communication with the storage layer (figure 3), comprising compressible hardwood pulp (col. 12, lines 16 – 28) and having a density of between about 0.05 and about 0.4 g/cc (col. 15, lines 3 – 6) where the ratio of the vertical wicking height of the wicking layer to the vertical wicking height of the storage layer is equal to or greater than 1.25 as set forth in col. 11, lines 11 – 15.

As to claim 2, Hammons discloses the vertical wicking height to be greater than 3.0 as set forth in col. 11, lines 19 – 22.

With reference to claims 3 – 4, Hammons discloses the use of eucalyptus as set forth in col. 12, lines 16 – 28.

As to claim 5, Hammons discloses the wicking layer further comprising chemically treated softwood fibers as set forth in col. 11, lines 53 – 66.

With reference to claim 6, Hammons discloses the wicking layer being imprinted with a compression pattern as set forth in col. 10, lines 40 – 52.

With respect to claim 10, Hammons discloses an absorbent core wherein the wicking layer has a density of between 0.1 and 0.3 g/cc as set forth in col. 15, lines 3 – 5.

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With respect to claim 11, the examiner notes the product by process language and reminds the applicant that:

"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted) (

Additionally, Hammons discloses a unitary absorbent core as set forth in figure 3.

Regarding claim 12, Hammons discloses an absorbent article comprising a liquid permeable top sheet (col. 6, lines 64 – 67), a liquid impermeable back sheet (40) and an absorbent core disposed between the topsheet and the backsheet, comprising an acquisition layer (38), a storage layer (44) having absorbent capacity (col. 9, lines 10 – 18), disposed beneath and in fluid communication with the acquisition layer (figure 3) and a wicking layer (46) disposed beneath and in fluid communication with the storage layer (figure 3), comprising compressible hardwood pulp (col. 12, lines 16 – 28) and having a density of between about 0.05 and about 0.4 g/cc (col. 15, lines 3 – 6) where the ratio of the vertical wicking height of the wicking layer to the vertical wicking height of the storage layer is equal to or greater than 1.25 as set forth in col. 11, lines 11 – 15.

As to claim 13, Hammons discloses the claimed articles as set forth in col. 3, lines 49 – 53.

Regarding claim 29, Hammons discloses an absorbent core (42) comprising an acquisition layer (44), a storage layer (48) having absorbent capacity (col. 14, lines 63 – 66), disposed beneath and in fluid communication with the acquisition layer (col. 13, lines 10 – 16) and a wicking layer (46) disposed beneath and in fluid communication

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with the storage layer (figure 2), comprising compressible hardwood pulp as set forth in col. 12, lines 16 – 28.

Hammons discloses that the storage layer has an absorbent capacity by disclosing that the storage layer (48) is formed from the same materials as the acquisition layer. As disclosed in col. 9, lines 10 – 19, the acquisition layer may be formed from cellulosic fibers, which possesses absorptive properties. Likewise, in col. 7, lines 53 – 57, Hammons discloses that the acquisition layer temporarily stores fluid.

With reference to claim 30, Hammons discloses an absorbent core wherein the wicking layer (46) comprises from about 50% by weight to about 99.9% by weight of hardwood fibers (col. 12, lines 25 – 26) and from about 0.1% by weight to about 50% by weight synthetic fibers (col. 23, lines 35 – 36), the storage layer (48) including synthetic fibers (col. 14, lines 63 – 66 and col. 9, lines 10 – 13) and having a density of between about 0.05 and about 0.25 g/cc (col. 14, lines 63 – 66 and col. 8, lines 59 – 61) and the acquisition layer (44) includes synthetic fibers (col. 9, lines 10 – 13) and has a density of between 0.04 to 0.1g/cc as set forth in col. 8, lines 59 – 61.

As to claim 35, Hammons discloses an absorbent core (42) comprising an acquisition layer (44), a storage layer (48) having absorbent capacity (col. 14, lines 63 – 66), disposed beneath and in fluid communication with the acquisition layer (figure 2) and a web imprinted wicking layer (46) disposed beneath and in fluid communication with the storage layer (figure 2), comprising compressible wood pulp (col. 12, lines 16 –

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28) in which there is a pattern of densified regions and less densified regions as set forth in col. .

In col. 10, lines 40 – 48, Hammons incorporates Werenicz (US 4,842,666) which discloses the adhesive as a fine web of extremely thin filaments (col. 2, lines 50 – 58) thereby providing a web imprinted layer. Further, Hammons discloses that heat and/or pressure bonds may be used (col. 10, lines 48 – 52) which would provide the layer with a pattern of densified regions (wherever pressure and/or heat bonds exist) and less densified regions (areas that have not been heat/pressure bonded).

With reference to claim 36, Hammons discloses an absorbent core wherein the wicking layer (46) comprises from about 50% by weight to about 99.9% by weight of wood fibers (col. 12, lines 25 – 26) and from about 0.1% by weight to about 50% by weight synthetic fibers (col. 23, lines 35 – 36), the storage layer (48) including synthetic fibers (col. 14, lines 63 – 66 and col. 9, lines 10 – 13) and having a density of between about 0.05 and about 0.25 g/cc (col. 14, lines 63 – 66 and col. 8, lines 59 – 61) and the acquisition layer (44) includes synthetic fibers (col. 9, lines 10 – 13) and has a density of between 0.04 to 0.1g/cc as set forth in col. 8, lines 59 – 61.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 7 – 9 are rejected under 35 U.S.C. 103(a) as obvious over Hammons et al. (US 5,647,863).

The difference between Hammons and claims 7 – 9 is the provision that the rewet value of the core is numerically defined.

Hammons teaches a core with low rewet characteristics (col. 5, lines 17 – 19) but fails to associate a numerical value with the rewet characteristic.

However, it well known in the art that a low rewet value generally corresponds to a rewet value of less than 1 gram. See, for example, col. 6, lines 23 – 24 of Georger et al. (US 5,919,177) and col. 6, lines 36 – 37 and Table 1 of Aziz (US 4,324,247).

It would have been obvious to one of ordinary skill in the art to consider the low rewet value of Hammons as being comparable to less than 1 gram since it has been established in the prior art that a low rewet value is equivalent to 1 gram or less.

### ***Response to Arguments***

Applicant's arguments filed July 23, 2004 have been fully considered but they are not persuasive.

In response to the applicant's argument that the layers as designated by the examiner do not correspond to the layers as designated by the applicant, the examiner contends that the names given to the layers are just that. The examiner is not limited to using the same names to describe the layers as the Hammons, the inventor. If the layer that Hammons calls the acquisition layer is capable of receiving bodily fluids, then this layer may also be deemed a topsheet. Likewise, if the layer thah Hammons refers to a



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s storage/distribution layer and/or indicator layer is capable of transporting fluids quickly, then it may also be deemed a wicking layer.

The examiner has acknowledged that the layers of the claimed invention are separate, though not absolutely necessary since a layer may be considered as a zone, a thickness, etc. In any event, the examiner likewise uses separate "layer" to meet the claimed invention, including the storage layer (indicated by reference character "44" of Hammons) and the wicking layer (indicated by reference characters "46", "48" of Hammons).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday,


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7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 703-308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michele Kidwell  
Examiner  
Art Unit 3761

  
Larry I. Schwartz  
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Group 3700